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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,486	07/20/2001	Fred N. Desai	8642	2573

27752 7590 07/02/2003

THE PROCTER & GAMBLE COMPANY
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EXAMINER
CHEVALIER, ALICIA ANN

ART UNIT	PAPER NUMBER
1772	10

DATE MAILED: 07/02/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 09/909,486	Applicant(s) DESAI ET AL.	
	Examiner Alicia Chevalier	Art Unit 1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *17 June 2003* .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-20* is/are pending in the application.

4a) Of the above claim(s) *11-20* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-10* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) *5 + 6* .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I, claims 1-10, in Paper No. 9 is acknowledged. The traversal is on the ground(s) that since there is sufficient common subject matter between the two groups mentioned, above, searching the various subclasses in one application presents no undue burden to the Office. This is not found persuasive because the examiner has already shown that there would be a burden because these inventions are distinct and have acquired a separate status in the art as shown by their different classification and have acquired a separate status in the art because of their recognized divergent subject matter and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper. Furthermore, the class and subclasses provided in the restriction requirement are merely the initial classification of each group and is by no means the entire search for that particular group. Since, each group is in a different class and each class is handled by different art units, and in this particular case different technology centers, it is in Applicant's best interest, for proper examination, to have the claims examined by a person best versed in those specific art areas.

The requirement is still deemed proper and is therefore made FINAL.

Specification

2. The abstract of the disclosure is objected to because it is more then 150 words. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims 7, 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilmore et al. (5,369,858).

Gilmore discloses an apertured nonwoven fabric prepared from melt blown microfibers for use as a fluid transmitting topsheet for disposable diapers and sanitary napkins (col. 1, lines 10-12 and the summary of the invention). The apertures in the nonwoven fabric of the invention may be a plurality of different size and have a circumferential edge (col. 2, lines 47-49 and figure 5a). The basis weight of the fabric is between 20 and 90 grams per square yard (24 to 107 gsm) (table 2). Table 2 also shows that the fabric has an elongation of 60-124% in the cross machine direction following the ASTM D168264, the One-Inch Cut strip Test.

Gilmore does not specifically recite the limitation "being capable of at least 70% extension in the cross machine direction at a loading of 10 g/cm."

The exact extension under different loads is deemed to be a cause effective variable with regard to the break/tear strength of the fabric. It would have been obvious to one having ordinary skill in the art to have determined the optimum value of a cause effective variable such as extension under different loads through routine experimentation in the absence of a showing of criticality in the claimed extension. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). In view of Gilmore's teaching to use a

fabric with an elongation of 60-124% in the cross machine direction following the ASTM D168264, the One-Inch Cut strip Test, one of ordinary skill in the art would have been motivated to use a fabric capable of at least 70% extension in the cross machine direction at a loading of 10 g/cm because it would have a greater resistance to breaking or tearing.

The method of forming the product is not germane to the issue of patentability of the product itself. Further, when the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the Applicant to present evidence from which the Examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. *In re Brown*, 459 F.2d 531, 173 USPQ 685 (CCPA 1972); *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974). This burden is NOT discharged solely because the product was derived from a process not known to the prior art. *In re Fessman*, 489 F.2d 742, 180 USPQ 324 (CCPA 1974).

Furthermore, the determination of patentability for a product-by-process claim is based on the product itself and not on the method of production. If the product in the product-by-process claim is the same or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. *In re Thorpe*, 227 USPQ 946, 966 (Fed. Cir. 1985) and MPEP §2113. In this case, the limitation the "apertures formed by application of a tensioning force, said apertures coincident with a plurality of weakened, melt-stabilized locations in claim 7 is a method of production and therefore does not determine the patentability of the product itself.

5. Claims (what ever) are rejected under 35 U.S.C. 103(a) as being unpatentable over Gilmore et al. (5,369,858) in view of Suzuki et al. (4,892,528).

Gilmore discloses all the limitations of the instant claimed invention except for the hole size, hole aspect ratio and the open area.

Suzuki discloses a nonwoven topsheet for a diaper comprising apertures each being circular and having an area of 7 to 50 mm^2, a diameter of 2 to 20 mm, an array pitch of 6 to 20 mm and a total aperture ratio with respect to the surface area of 15 to 70% (open area). The topsheet is so constructed that the body fluids such as urine and sweat freely pass there through without soaking the surface of the non-apertured zone. See column 5, lines 12-40.

It would have been obvious to one of ordinary skill in the art to use the aperture size and open area ratio of Suzuki in Gilmore because it would allow body fluids to pass freely there through without soaking the surface of the non-apertured zone.

The exact hole aspect ratio is deemed to be a cause effective variable with regard to the hole size, depth and fluid permeability of the topsheet. It would have been obvious to one having ordinary skill in the art to have determined the optimum value of a cause effective variable such as hole aspect ratio through routine experimentation in the absence of a showing of criticality in the claimed ratio. *In re Boesch*, 205 USPQ 215 (CCPA 1980), *In re Woodruff*, 16 USPQ2d 1934, 1936 (Fed. Cir. 1990). One of ordinary skill in the art would have been motivated to optimize the hole aspect ratio in order to ensure that body fluids are able to freely pass through the topsheet without soaking the surface of the non-apertured zone.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (703) 305-1139.

The Examiner can normally be reached on Monday through Thursday from 8:00 a.m. to 5:00 p.m. The Examiner can also be reached on alternate Fridays

If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Harold Pyon can be reached by dialing (703) 308-4251. The fax phone number for the organization official non-final papers is (703) 872-9310. The fax number for after final papers is (703) 872-9311.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose phone number is (703) 308-0661.

ac

6/27/03